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April 23, 2021

**Via ECF**

The Honorable Douglas E. Arpert, U.S.M.J.  
United States District Court for the District of New Jersey  
Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street, Courtroom 6W  
Trenton, New Jersey 08608

**Re: Amgen Inc. v. Sandoz Inc., et al.,  
Civil Action No. 18-11026 (MAS)(DEA) (consolidated)**

Dear Judge Arpert:

On behalf of Defendants<sup>1</sup> in the above-referenced matter, we write in response to Plaintiff Amgen Inc.'s ("Amgen") letter dated April 22, 2021 concerning Defendants' request for a formal briefing schedule and hearing date for Defendants' motion to strike the expert report of Amgen's expert Dr. Ronald A. Thisted in its entirety, as well as the portions of the rebuttal expert report of Dr. Andrew F. Alexis that rely on Dr. Thisted's report.

Defendants' submission is not untimely, nor have Defendants engaged in any undue delay in raising this issue before the Court. Per the parties' agreement, Defendants did not depose Dr. Thisted until March 15, 2021 (after the expert discovery deadline). Despite Amgen's claims that Dr. Thisted was offering opinions in rebuttal to Defendants experts, Dr. Thisted himself confirmed during his deposition that he did not review any of Defendants' opening expert reports, let alone consider any of Defendants' opening expert reports in forming his opinions. Only after having Dr. Thisted confirm that his report indeed was not a proper rebuttal report did Defendants timely bring this issue to the Court's attention. It is Defendants who have and will continue to suffer undue prejudice until this issue is timely resolved, due to Amgen's gamesmanship in deliberately withholding expert opinions pertaining to secondary considerations, that they expressly represented they would not present at trial, until the last and final round of expert reports.

This dispute is procedural in nature, and Defendants' motion is properly framed as a motion to strike before this Court. The issue is whether Amgen's expert reports are proper rebuttal reports under the Federal Rules, and whether they were timely under the Court's scheduling order for offering opinions regarding secondary considerations that were required to be presented during the opening round of expert reports, *not* the rebuttal round. Contrary to Amgen's assertions, Defendants' proposed

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<sup>1</sup> Alkem Laboratories Ltd., Cipla Ltd., Dr. Reddy's Laboratories and Dr. Reddy's Laboratories, Ltd., MSN Laboratories Private Ltd., Pharmascience Inc., Sandoz Inc., Torrent Pharmaceuticals Ltd., and Zydus Pharmaceuticals (USA) Inc. (collectively, "Defendants")

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motion is not duplicative. Rather, resolving this issue now would obviate the need for Defendants to file any motion *in limine* to exclude Dr. Thisted's (and by extension, Dr. Alexis's) testimony, and would streamline remaining pretrial activities. Defendants thus respectfully reiterate their request for a formal briefing schedule and oral argument for their proposed motion to strike.

We thank the Court for its consideration and appreciate the Court's attention to this matter.

Respectfully submitted,

/s/ *Eric I. Abraham*

Eric I. Abraham

cc: All counsel of record via ECF